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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION TO AMEND)
RULES FOR ADMISSION TO THE BAR) R-06-0017
OF ARIZONA)
) COMMENT ON PETITION
_____)

The undersigned Arizona attorneys submit these comments in support of the
Petition to adopt an admission by motion rule in Arizona (the “Petition”).

Since 2002, when the American Bar Association adopted its model admission
by motion rule, the number of states allowing admission by motion has reached a
large majority. Arizona should join its sister states. The reasons favoring adoption
are compelling. They are articulated both in the report of the ABA’s Commission
on Multijurisdictional Practice (the “MJP Commission”) and in the report prepared
by Arizona’s own Multijurisdictional Task Force (the “Arizona Task Force”),
presented to the Arizona State Bar Board of Governors in March 2002. The Petition
attaches both reports, and summarizes the arguments.

We submit these separate comments not to reiterate the arguments already well stated but to explain why the State Bar Board of Governors' previous inaction should not keep the Court from acting now.

I. The MJP Commission and the Arizona Task Force.

In November 2001, the MJP Commission issued an interim report proposing several model rules affecting the multijurisdictional practice of law. [See http://www.abanet.org/cpr/mjp/mjp-final_interim_report.doc.] The ABA then circulated the MJP Commission's proposed rules to state bar associations and others for comment, anticipating a vote at the August 2002 annual ABA meeting. Responding to the ABA's request, Nick Wallwork, who was State Bar President at the time, appointed the Arizona Task Force, co-chaired by attorney Steven A. Hirsch and ASU Law Professor Myles V. Lynk. The Arizona Task Force studied the MJP Commission proposals in depth and submitted a report to the Arizona State Bar Board of Governors, recommending that the Board of Governors support the MJP Commission's proposals, with some minor revisions. [See Arizona Task Force Report, attached to the Petition.] Among the Arizona Task Force's recommendations was that the Board of Governors support the proposed admission by motion rule. [Id. at 3, 9-11.]

The Board of Governors was not ready to throw its support behind the admission by motion proposal, deciding instead that additional time was needed to study the question. As a result, President Wallwork forwarded to the MJP Commission a revised report in which the Board of Governors stated that it "offers

no recommendation” concerning the admission by motion rule. [See President Wallwork’s letter to the MJP Commission dated March 14, 2002, and the modified report at 9, attached as Exhibit A.]

At its August 2002 annual meeting, the ABA House of Delegates approved all of the MJP Commission’s proposals, thus passing the Model Rule on Admission by Motion along with other model rule changes. [See ABA Model Rule on Admission by Motion as adopted, attached as Exhibit B.] These proposals, including the Model Rule on Admission by Motion, received a favorable recommendation by the Conference of Chief Justices, which directed its representative in the ABA House of Delegates to vote in favor of all proposals. [Resolution 36, Conference of Chief Justices, attached as Exhibit C.]

Following the House of Delegates’ vote, the Arizona Task Force asked the Board of Governors to support the ABA’s proposals and petition this Court for adoption of all necessary rule changes. [See Arizona Task Force’s Final Recommendations submitted for February 21, 2003, Board of Governor’s Meeting, attached to the Petition]. The Board of Governors voted to approve all of the recommendations except for admission by motion. As it had the year before, the Board of Governors believed that Arizona should not be in the lead in adopting admission by motion.

This Court, in turn, approved the rule changes proposed by the Board of Governors [R-03-0035], but it never considered the admission by motion proposal, which had stalled at the Board of Governors.

II. Now is the Time to Approve Admission By Motion.

Almost four years have passed since the Board of Governors deferred recommending an admission by motion rule in Arizona. The Board of Governors has not, however, used that time to study the issue further. The Petition now allows this Court to act based upon the clear experience of other states. This experience confirms that the ABA House of Delegates and the Conference of Chief Justices were correct in 2002 when they supported an admission by motion rule in all jurisdictions.

Admission by motion now exists in at least 37 states plus the District of Columbia. [See ABA Survey, attached as Appendix A to the Petition.] No evidence suggests that incidents of malpractice or unethical behavior have increased as a result. This is not surprising. Logic and common sense suggest that lawyers with many years of experience and clean records – i.e. those who qualify for admission by motion – should be at least as qualified to practice law in Arizona as new graduates, with no experience or track record, who have recently passed an Arizona bar examination.

As the Petition explains, without an admission by motion rule in their home state, Arizona lawyers are disadvantaged when they move to another state that conditions admission on reciprocity. Adoption in Arizona of an admission by motion procedure will open the doors to Arizona lawyers in the 24 states that require reciprocity for admission by motion. [See ABA Survey.]

Admission by motion will help not only Arizona lawyers moving away. State and local government law offices, non-profit legal services programs, public defender offices, and private law firms will be able to recruit more effectively experienced lawyers living in other states, many of whom understandably may be reluctant to plant new roots on the condition of taking another bar examination.

III. The Proposed Rule Protects Arizona Consumers of Legal Services

Obviously, concerns about increased competition are no reason to *oppose* admission by motion. On the contrary, increased competition is *good* for consumers of legal services because increased supply leads to lower prices and greater availability of services.

When discussing the proposed admission by motion rule in its 2002 and 2003 meetings, some members of the Board of Governors expressed concern about laws and procedures unique to Arizona that lawyers moving here might not understand. Addressing this concern, the Arizona Task Force added a provision --not included in the ABA Model Rule -- that requires all lawyers admitted by motion to complete successfully a State Bar sponsored course on Arizona law and practice. This new language, modeled after the current Professionalism Course mandated in Supreme Court Rule 34(e), is contained in the proposed rule attached to the Petition. Experienced and ethical lawyers should have no problem adjusting to any differences or nuances of Arizona practice as it affects their areas of practice. For some, especially those practicing in areas of federal law, a change in location will present no new legal issues.

Conclusion

For these reasons and those articulated in the Petition, we urge the Court to adopt the proposed rule allowing admission to the Arizona bar by motion.

DATED this 20th day of December, 2006.

OSBORN MALEDON, P.A.

By

A handwritten signature in black ink, appearing to read 'W. J. Maledon', written over a horizontal line.

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